



January 11, 2008

SENATE BILL No. 41

DIGEST OF SB 41 (Updated January 8, 2008 4:58 pm - DI 14)

Citations Affected: IC 14-8; IC 14-26.

Synopsis: Public freshwater lakes. Defines "acquiescence" and "lake" for purposes of certain lake preservation laws. Establishes evidence that indicates the acquiescence of a riparian owner to allow the public use of a lake. Makes conforming changes. Requires the department of natural resources to prepare a list of public freshwater lakes. Allows the owners of a body of water to petition to have the body of water declared a public freshwater lake.

Effective: July 1, 2008.

Meeks

January 8, 2008, read first time and referred to Committee on Natural Resources.
January 10, 2008, amended, reported favorably — Do Pass.

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SB 41—LS 6168/DI 77+



January 11, 2008

Second Regular Session 115th General Assembly (2008)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2007 Regular Session of the General Assembly.

SENATE BILL No. 41

A BILL FOR AN ACT to amend the Indiana Code concerning natural and cultural resources.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 14-8-2-1.5 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2008]: **Sec. 1.5. "Acquiescence", for the purposes of IC 14-26-2,**
4 **has the meaning set forth in IC 14-26-2-1.2.**
- 5 SECTION 2. IC 14-8-2-137 IS AMENDED TO READ AS
6 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 137. "Lake" has the
7 following meaning:
- 8 (1) For purposes of IC 14-9-9 and IC 14-15, a natural or an
9 artificial lake.
- 10 **(2) For purposes of IC 14-26-2, the meaning set forth in**
11 **IC 14-26-2-1.5.**
- 12 ~~(2)~~ **(3)** For purposes of IC 14-26-3, the meaning set forth in
13 IC 14-26-3-1.
- 14 SECTION 3. IC 14-26-2-1.2 IS ADDED TO THE INDIANA CODE
15 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
16 1, 2008]: **Sec. 1.2. As used in this chapter, "acquiescence" means**
17 **consent without conditions, tacit or passive compliance, or**

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1 **acceptance.**

2 SECTION 4. IC 14-26-2-1.5 IS ADDED TO THE INDIANA CODE
3 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
4 1, 2008]: **Sec. 1.5. As used in this chapter, "lake" means a**
5 **reasonably permanent body of water that:**

- 6 (1) **existed on March 12, 1947;**
7 (2) **is substantially at rest in a depression in the surface of the**
8 **earth that is naturally created;**
9 (3) **is of natural origin or part of a watercourse, including a**
10 **watercourse that has been dammed; and**
11 (4) **covers an area of at least five (5) acres within the shoreline**
12 **and water line, including bays and coves.**

13 SECTION 5. IC 14-26-2-7 IS AMENDED TO READ AS
14 FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 7. (a)** This section
15 applies to a public freshwater lake, regulated or otherwise, that covers
16 an area of at least ten (10) acres.

17 (b) A person may not order or recommend the:

- 18 (1) construction;
19 (2) reconstruction;
20 (3) recleaning; or
21 (4) repair;

22 of a ditch, dam, or other project that will affect or is likely to affect a
23 lowering of the water level of the **public freshwater** lake.

24 SECTION 6. IC 14-26-2-8 IS AMENDED TO READ AS
25 FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 8.** Accretion rights in
26 public freshwater lakes are limited to land from which the waters have
27 receded or may recede from natural causes only. Accretion rights do
28 not accrue to a riparian landowner as a consequence of lowering the
29 **public freshwater** lake level by any of the following:

- 30 (1) Drainage.
31 (2) Extending the shoreline into the water of the **public**
32 **freshwater** lake by filling the **public freshwater** lake with soil or
33 any other substance.
34 (3) Extending the shoreline away from the **public freshwater**
35 lake by excavating, dredging, or channeling through the shoreline.

36 SECTION 7. IC 14-26-2-10 IS AMENDED TO READ AS
37 FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 10. (a)** Notwithstanding
38 any other provision of law but subject to section 11 of this chapter, the
39 department may not authorize:

- 40 (1) the changing of the level;
41 (2) the dredging, other than to maintain channels or construct sea
42 walls, beaches, or near-shore access improvements on a lot by lot

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basis; or
 (3) the mining;
 of a public freshwater lake without giving notice and the opportunity
 for a public hearing at the county seat of the county in which the **public
 freshwater** lake is located.

(b) The notice must:

- (1) generally describe the project for which a permit has been requested to authorize;
- (2) state that the public has a right to request that a hearing be held on the proposed project;
- (3) state that persons interested in or affected by the proposed project may speak at the hearing; and
- (4) be published two (2) times, seven (7) days apart, in two (2) daily newspapers in the county in which the **public freshwater** lake is located, in the manner prescribed by IC 5-3-1.

(c) If a hearing is requested within ten (10) days after the final publication of the notice, the department shall do the following:

- (1) Hold a public hearing in the manner stated in the notice.
- (2) Give notice of the date, time, and place of the hearing as prescribed in subsection (b).
- (3) Consider the public comments concerning the proposed project before the department makes a decision concerning the proposal.

SECTION 8. IC 14-26-2-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 12. (a) The department may not issue a permit for the construction of a channel into a public freshwater lake unless:

- (1) the channel follows the path of a stream already in existence; or
- (2) the applicant proves that fifty-one percent (51%) of the property owners abutting the shoreline of the **public freshwater** lake approve of the channel construction.

(b) This section does not prevent the department from issuing a permit to construct small private drainage channels.

SECTION 9. IC 14-26-2-14.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 14.5. (a) For purposes of determining the acquiescence of a riparian owner to allow the public use of a lake, indicators of acquiescence include the following:**

- (1) Evidence that the general public has used the lake for recreational purposes.

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(2) Evidence that the riparian owner did not object to the operation by another person of a privately owned boat rental business, campground, or commercial enterprise that allowed nonriparian owners to gain access throughout the lake.

(3) A record of regulation of previous construction activities on the lake by the department or the department of conservation (before its repeal).

(b) Acquiescence does not exist if a lake has been adjudicated after March 12, 1947, to be a private lake and the department, or the department of conservation (before its repeal), was a party to the adjudication.

SECTION 10. IC 14-26-2-23, AS AMENDED BY P.L.152-2006, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 23. (a) Unless a person obtains a permit from the department under this section and conducts the activities according to the terms of the permit, a person may not conduct the following activities:

(1) Over, along, or lakeward of the shoreline or water line of a public freshwater lake:

(A) excavate;

(B) place fill; or

(C) place, modify, or repair a temporary or permanent structure.

(2) Construct a wall whose lowest point would be:

(A) below the elevation of the shoreline or water line; and

(B) within ten (10) feet landward of the shoreline or water line, as measured perpendicularly from the shoreline or water line; of a public freshwater lake.

(3) Change the water level, area, or depth of a public freshwater lake or the location of the shoreline or water line.

(b) An application for a permit for an activity described in subsection (a) must be accompanied by the following:

(1) A nonrefundable fee of one hundred dollars (\$100).

(2) A project plan that provides the department with sufficient information concerning the proposed excavation, fill, temporary structure, or permanent structure.

(3) A written acknowledgment from the landowner that any additional water area created under the project plan is part of the **public freshwater** lake and is dedicated to the general public use with the public rights described in section 5 of this chapter.

(c) The department may issue a permit after investigating the merits of the application. In determining the merits of the application, the

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department may consider any factor, including cumulative effects of the proposed activity upon the following:

- (1) The shoreline, water line, or bed of the **public freshwater** lake.
- (2) The fish, wildlife, or botanical resources.
- (3) The public rights described in section 5 of this chapter.
- (4) The management of watercraft operations under IC 14-15.
- (5) The interests of a landowner having property rights abutting the **public freshwater** lake or rights to access the **public freshwater** lake.

(d) A contractor or agent of the landowner who engages in an activity described in subsection (a)(1), (a)(2), or (a)(3) must comply with the terms of a permit issued under this section.

(e) The commission shall adopt rules under IC 4-22-2 to do the following:

- (1) Assist in the administration of this chapter.
- (2) Provide objective standards for issuing permits under this section, including standards for the configuration of piers, boat stations, platforms, and similar structures. The standards:
 - (A) may provide for a common use if the standard is needed to accommodate the interests of landowners having property rights abutting the **public freshwater** lake or rights to access the **public freshwater** lake; and
 - (B) shall exempt any class of activities from licensing, including temporary structures, if the commission finds that the class is unlikely to pose more than a minimal potential for harm to the public rights described in section 5 of this chapter.
- (3) Establish a process under IC 4-21.5 for the mediation of disputes among persons with competing interests or between a person and the department. A rule adopted under this subsection must provide that:
 - (A) if good faith mediation under the process fails to achieve a settlement, the department shall make a determination of the dispute; and
 - (B) a person affected by the determination of the department may seek administrative review by the commission.

SECTION 11. IC 14-26-2-24 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 24. (a) Relying on recommendations of the department and the advisory council established by IC 14-9-6-1, the commission shall adopt, under IC 4-22-7-7(a)(5)(A), and maintain a nonrule policy statement that**

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1 lists the public freshwater lakes in Indiana. For each public
 2 freshwater lake the statement must include the following
 3 information:

4 (1) The name of the lake.

5 (2) The county and specific location within the county where
 6 the lake is located.

7 (b) A person may obtain administrative review from the
 8 commission for the listing or nonlisting of a lake as a public
 9 freshwater lake through a licensure action, status determination,
 10 or enforcement action under IC 4-21.5.

11 SECTION 12. IC 14-26-2-25 IS ADDED TO THE INDIANA
 12 CODE AS A NEW SECTION TO READ AS FOLLOWS
 13 [EFFECTIVE JULY 1, 2008]: **Sec. 25. (a) The owner or owners of**
 14 **the entire shoreline or water line of:**

15 (1) a lake;

16 (2) a pond; or

17 (3) another reasonably permanent body of water that is
 18 substantially at rest;

19 may petition the department to declare the body of water a public
 20 freshwater lake.

21 (b) If the department, in writing, grants the petition under
 22 subsection (a), the body of water becomes subject to this chapter.

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COMMITTEE REPORT

Madam President: The Senate Committee on Natural Resources, to which was referred Senate Bill No. 41, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, delete lines 14 through 17.

Page 2, delete lines 17 through 21.

Page 3, delete lines 33 through 42.

Page 4, delete lines 1 through 11.

Page 4, line 29, delete "over a".

Page 4, line 30, delete "period of years".

Page 6, delete lines 37 through 38.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 41 as introduced.)

JACKMAN, Chairperson

Committee Vote: Yeas 9, Nays 0.

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